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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:

HORIZON RIDGE MEDICAL & CORPORATE
CENTER, L.L.C.,

Debtor.

Case No.: BK-S-12-13906-BTB
Chapter 11

Date: N/A
Time: N/A

**EX PARTE APPLICATION FOR ORDER AUTHORIZING FILING OF APPRAISAL
CONTAINING PROPRIETARY INFORMATION UNDER SEAL PURSUANT TO 11
U.S.C. § 107(b)(1), FED. R. BANKR. P. 9018, AND LOCAL RULE 9018**

Horizon Ridge Medical & Corporate Center, L.L.C., debtor and debtor-in-possession (“Debtor”), hereby respectfully submits this ex parte application (the “Application”) requesting authorization to file an expert appraisal under seal as the appraisal contains proprietary information. Specifically, pursuant to Section¹ 107(b)(1), Bankruptcy Rule 9018, and Local Rule 9018, Debtor requests that this Court authorize the filing under seal of the appraisal report (the “Appraisal”) as attached to the declaration of Keith Harper (the “Harper Declaration”) filed in support of Debtor’s *Emergency Motion for Stay Pending Appeal Of Order Confirming Lender’s Liquidation Plan* (the “Motion”). The Harper Declaration and the Motion are filed

¹ All references to the “Bankruptcy Code” are to title 11 of the U.S. Code; all references to a “Federal Rule” or “Rule” are to the Federal Rules of Civil Procedure; all references to a “Bankruptcy Rule” are the Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” or “LR” are to the Local Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada.

1 concurrently with this Application. The relief requested through this Application is substantively
 2 similar to that requested by Debtor in the *Ex Parte Application for Order Authorizing Filing of*
 3 *Appraisal Containing Proprietary Information Under Seal Pursuant to 11 U.S.C. § 107(b)(1),*
 4 *Fed. R. Bankr. P. 9018, and Local Rule 9018* [ECF No. 404], which was approved by order of
 5 this Court. See ECF No. 407.

6 The Appraisal contains proprietary information regarding terms of the economic
 7 agreement between Debtor and the respective tenants, including monthly lease amounts, which
 8 information is required to be protected by this Court pursuant to the preceding authorities. Were
 9 Debtor required to file the proprietary commercial information contained in the Appraisal into
 10 the public record, the filing would place Debtor at a severe disadvantage in future lease
 11 negotiations with existing and new tenants alike, reducing Debtor's ability to negotiate the best
 12 commercially feasible rental terms. Rather, Debtor's ability to increase rental rates or otherwise
 13 negotiate terms more favorable to it would be effectively capped, unable to take advantage of
 14 any increasing demand for leased commercial real estate in a rebounding rental market. In turn,
 15 the release of the information contained in the Appraisal to the general public would limit the
 16 potential revenue that could be generated by Debtor's real property.

17 Copies of the Appraisal will be provided to LaSalle Bank N.A., as trustee for the
 18 registered holders of GMAC Commercial Mortgage Securities Inc., Commercial Mortgage Pass-
 19 Through Certificates, Series 2003-C1, acting by and through CWC Capital Asset Management
 20 LLC, as special servicer ("Secured Lender").

21 This Application is made and based on the memorandum of points and authorities
 22 provided herein, and the pleadings, papers, and other records on file with the clerk of the Court,
 23 judicial notice of which is requested.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
5 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L) and (O).

6 2. The statutory basis for the relief sought herein is Section 107(b)(1), Bankruptcy
7 Rule 9018, and LR 9018.

8 3. Venue of Debtor's Chapter 11 case before this Court is proper pursuant to 28
9 U.S.C. §§ 1408 and 1409.

10 4. Pursuant to LR 9014.2, Debtor consents to entry of final order(s) or judgment(s)
11 by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the
12 parties, cannot enter final orders for judgment consistent with Article III of the United States
13 Constitution.

14 **II.**
15 **BACKGROUND**

16 1. On March 7, 2014, Debtor filed the Motion supported by the Harper Declaration
17 requesting that this Court stay the Chapter 11 Case pending Debtor's appeal of the *Plan of*
18 *Liquidation for Debtor Horizon Ridge Medical & Corporate Center, LLC by Creditor Bank of*
19 *America, N.A. as Trustee* [ECF No. 126] (the "Liquidation Plan"), which appeal is currently
20 pending before the bankruptcy appellate panel for the Ninth Circuit. The Harper Declaration
21 references proprietary leasing information, including rental rates.

22 **III.**
23 **LEGAL ARGUMENT**

24 Section 107(b)(1) of the Bankruptcy Code provides that, "[o]n request of a party in
25 interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or
26 confidential research, development, or commercial information." Further, Bankruptcy Rule 9018
27 provides, in pertinent part, that:

28 On motion or on its own initiative, with or without notice, the court may
make any order which justice requires (1) to protect the estate or any
entity in respect of a trade secret or other confidential research,
development, or commercial information. . . .

Therefore, Section 107(b)(1) and Bankruptcy Rule 9018 empower this Court to protect Debtor's confidential commercial information from disclosure to other parties and entities. See In re A.G. Financial Service Center, Inc., 395 F.3d 410, 416 (7th Cir. 2005) (stating that both Section 107(b)(1) and Bankruptcy Rule 9018 authorized the court to withhold confidential commercial information from public disclosure); In re JMS Automotive Rebuilders, Inc., 2002 WL 32817517, 3 (C.D. Cal. 2002) (upholding the bankruptcy court's order permitting confidential research and work product to be sealed pursuant to Section 107(b)(1) and Bankruptcy Rule 9018). Indeed, the withholding of commercial information is directed toward not affording an unfair advantage to competitors by making public information as to the commercial operations of the debtor. See In re Itel Corp., 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982).

Moreover, the relief mandated by Section 107(b)(1) is mandatory as indicated by the use of the word "shall." See In re Orion Pictures Corp., 21 F.3d 24, 27 (2nd Cir. 1994) (stating that if a trade secret or confidential research, development, or commercial information is involved, a court is "required to protect a requesting interested party and has no discretion to deny the application"); see also In re Neal, 461 F.3d 1048, 1053 (8th Cir. 2006) (stating that if a paper filed in a bankruptcy court fits within Section 107(b)(1) or (2), "protection is mandatory when requested by a party in interest"). Finally, issues concerning the public disclosure of Debtor's confidential commercial information in its Chapter 11 case is to be resolved exclusively under Section 107. See In re Neal, 461 F.3d at 1053. Accordingly, Debtor seeks to file the Appraisal under seal pursuant to Section 107(b)(1), Bankruptcy Rule 9018, and LR 9018 because it contains sensitive commercial information in the form of rental rates and terms received for leasing Debtor's real property.

The information contained in the Appraisal is not public information, but rather proprietary commercial information that is not customarily disclosed in negotiations with other potential or existing tenants. Disclosure of the information contained in the Appraisal would harm Debtor in negotiations with future tenants in the rebounding leasing market, effectively limiting Debtor's ability to negotiate stronger lease terms than as detailed in the Appraisal. Likewise, disclosure of the information contained in the Appraisal would harm Debtor's ability

1 to retain current tenants, both at the termination of their existing leases or, potentially, prior to
2 the termination of the lease were existing tenants to request modification of their existing leases
3 as a result of terms disclosed in the Appraisal. For these reasons, Debtor would suffer substantial
4 and irreparable harm if the information contained in the Appraisal were publicly disclosed.

5 As detailed, the sensitive information contained in the Appraisal qualifies as “commercial
6 information” that should be protected by the Court pursuant to Section 107(b)(1), Bankruptcy
7 Rule 9018, and Local Rule 9018. In turn, to prevent the irreparable harm that would occur if
8 such traditionally private information resulting from the discrete negotiations between two
9 parties were publicly disclosed, this Court should grant this Application. In addition to the
10 strong bases supporting this Court’s authorization of filing the Appraisal under seal, no parties-
11 in-interest would suffer any tangible harm from such authorization. The Secured Lender is
12 receiving the Appraisal concurrently with the filing of the Motion. Those persons who would be
13 prevented access to the confidential information contained in the Appraisal would only have an
14 interest in reviewing and using such information in connection with negotiations of future leases
15 for Debtor’s real property. Therefore, while a denial of the relief requested in this Application
16 would irreparably harm Debtor and any potential future owner of Debtor’s real property, the
17 approval of the relief requested in this Application would not harm any party-in-interest with
18 respect to issues surrounding the Motion.

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IV.
CONCLUSION

Debtor respectfully requests that this Court enter an order substantially in the form attached hereto as **Exhibit "1"** granting the Application and for such other and further relief as the Court deems just and proper.

DATED this 10th day of March, 2014.

GORDON SILVER

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